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General Services Administration
FAR Secretariat (MVR)
Attn: Ms. Laurie Duarte
1800 F Street NW - Room 4035
Washington, D.C. 20405

Reference: FAR Case 2001-014

Dear Ms. Duarte:

United Technologies Corporation is pleased to submit these comments regarding the proposed reconsideration and revocation of the Federal Acquisition Regulation ("FAR") rule on "Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings" (December 20, 2000; FAR Case 1999-010).

We strongly support revocation of the December 20, 2000 rule. The rule is unwarranted and unworkable. The proposed changes are unnecessary because they are more appropriately covered elsewhere in existing statutes and regulations. The rule requires contracting officers to make responsibility determinations on the basis of vague and ill-defined criteria that are outside their normal areas of expertise and training.

United Technologies Corporation ("UTC"), based in Hartford, Connecticut, provides a broad range of high technology products and support services to the building systems and aerospace industries, and is a major supplier to the U.S. Government. Additional information about UTC is available on the Internet at:

http://www.utc.com/company/company2.htm.

We are committed to the highest ethical standards in conducting all our business relationships. As an original signatory in 1986 to the Defense Industry Initiative on Business Ethics and Conduct, we are especially mindful of our responsibilities in performing contracts with the U.S. Government. In instances involving noncompliance with laws or regulations, we support reporting these problems to appropriate authorities. When necessary, we have designed internal programs to prevent and detect noncompliance, and have implemented additional internal controls to guard against recurrence when errors or omissions have occurred.

Rather than encouraging organizations to detect, report and prevent noncompliances, we believe the FAR rule emphasizes history at the expense of evaluating an organization's response to noncompliance, and, in so doing, may deter some organizations from adopting or adapting compliance and ethics programs.

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For example, under the December 20 rule, determinations of non-responsibility are made by contracting officers who are not trained in the complexities of labor laws and regulations that are solely enforceable by the Department of Labor. These laws include:

- Service Contract Act
- Davis-Bacon Act (enforced by individual agencies)
- Walsh-Healy Act
- Contract Work Hours and Safety Standards Act
- Family & Medical Leave Act
- Fair Labor Standards Act
- OSHA
- OFCCP (Affirmative Action)
- NLRB (National Labor Relations Board)
- Americans with Disability Act

There will simply not be sufficient time for the average contracting officer to make qualitative judgements about a prospective contractor's present responsibility. Faced with a requirement to determine "present responsibility" of numerous prospective contractors in line for awards of a federal contract, contracting officers are incentivized to rely on the "numbers" alone – number of actual and *alleged* noncompliances. There will be insufficient time and expertise to assess the quality of each contractor's response to each noncompliance matter. Moreover, we believe that the current rules at FAR 52.209-5 are adequate to ensure that the Government does business only with entities that have satisfactory records of business integrity.

In addition, there are ample existing cost principles dealing with legal and defense costs. The disallowance of costs arising out of activities related to assisting, promoting or deterring employee decisions regarding unionization would monumentally expand, rather than simply clarify, the existing procurement laws and regulations related to cost principles. A government contract is an expensive and inappropriate vehicle for advancing a labor relations agenda.

Finally, the rule is a step backward from the last six years of streamlining initiatives. The requirement for a certification is contrary to congressional direction in the 1996 Clinger-Cohen Act directing the Office of Federal Procurement Policy to eliminate all non-statutory certification requirements imposed on government contractors.

In summary, the December 20 final rule should be withdrawn as an unnecessary encumbrance on the acquisition process. The rule would place a burden on the contracting officer that is beyond that official's ability to implement in an equitable and consistent manner.

UTC appreciates the opportunity to respond to this FAR Case and urges the FAR Council to repeal this unworkable rule.

If you should have any questions regarding this matter, please contact me at (860) 728-6484.

Sincerely,

Patrick J. Gnazzo

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